

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 1999-011-E - ORDER NO. 1999-74
JANUARY 28, 1999

IN RE: Application of Duke Energy Corporation for) ORDER
Authorization to Issue Securities (Preference) APPROVING
Stock Purchase Rights, Preference Stock and) APPLICATION
Common Stock in accordance with Proposed)
Shareholders Rights Plan) and Request for)
Appropriate Waivers.)

On January 4, 1999, Duke Energy Corporation ("Applicant or "Duke") filed an application for authorization to issue, as a dividend distribution to the holders of its Common Stock, rights under its Shareholder Rights Plan ("Plan") and the units of Preference Stock issuable upon exercise of the rights, to issue Common Stock or other securities of Applicant in connection with such rights and to issue Common Stock or such other securities in exchange therefore. In addition, Duke requested all appropriate waivers of the requirements of Article 13, because, at this time, Duke will not actually issue any securities and cannot determine what its capital structure will be at the time that it might actually issue the Preference Stock or Common Stock under the Plan. Duke states that it does not know when, if ever, it will issue the Preference Stock or Common Stock for which it requests authority to issue in this application.

FINDINGS OF FACT

In its application, Duke states that it proposes to reserve for issuance under the proposed Plan, up to 50,000 shares of Preference Stock, to issue rights under the

proposed Plan, to reserve for issuance under the Plan shares of Common Stock, and to have authority from this Commission to issue such Preference Stock and Common Stock without further Commission action on the conditions set forth below.

Upon approval of the filed Plan, Duke will make a dividend distribution of one right (a Right) to purchase a unit (1/10,000 of a share) of a new series of Preference Stock, designated as Series A Participating Preference Stock, \$100 par value, of the Applicant. The record date for distribution of the Rights dividend will be a date determined by the Management Committee of the Applicant, which determination will not occur until after all approvals are received. Shareholders are not required to take any action to receive the Rights. The Applicant seeks approval for the authorization to issue up to 50,000 shares of the Series A Participating Preference Stock.

Duke's outstanding Common Stock certificates will initially represent both shares of Duke's Common Stock and the Rights, and the Rights will trade only with the shares of Common Stock. Ten (10) days after a person or group acquires, or 10 business days after the announcement of a tender or exchange offer to acquire, 15 percent or more of Duke's outstanding Common Stock (a "Triggering Event") the Rights will trade independently of the outstanding shares of Common Stock. The Rights will become exercisable in the event that person or group acquires 15 percent or more of Duke Common Stock and only when the Rights are no longer redeemable.

After becoming exercisable, each Right – except those held by an acquiring person whose Rights would become void – will entitle the holder to purchase at the exercise price additional Duke Common Stock having a current market value of

approximately two times the exercise price. If Duke is acquired in a merger or other business combination, each Right (except those voided) will entitle the holder to purchase, at the exercise price, common stock of the acquiror having a current market value of approximately two times the exercise price. In either case, after a Triggering Event occurs but before an acquiring person becomes the owner of at least 50 percent of Duke's outstanding Common Stock, Duke's board of directors may direct the exchange of one share of Common Stock for each Right, except those held by a hostile acquiror. The exercise price has been set by Duke's board of directors at \$190 per share.

Duke may redeem the Rights at a redemption price of 1 cent per Right at the direction of the board of directors, at any time prior to the close of business ten (10) business days after a person or group acquires 15% or more of Duke's Common Stock (subject to extension by the board of directors), or the expiration of the Rights, whichever occurs first. The Rights will expire 10 years from the date of adoption of the Plan by the board of directors unless redeemed earlier or exchanged by Duke. The board of directors has directed the outside directors of the Nominating Committee (or any successor committee) to review the Plan, when and as it may deem appropriate, but at least every three years, with authority to recommend modifications to the Plan or redemption of the Rights to the board of directors as it may determine to be in the best interest of Duke and its shareholders.

The adoption of the Plan should not negatively affect the economic interests of the shareholders of Applicant. Since the exercise price of the Right is significantly

higher than the current price of Duke Common Stock (about \$60 per share), the issuance of Rights should not cause a dilution of earnings per share.

Duke also requested waivers of Article 13 to the extent that such Article requires Duke to provide information not available because Duke, at this time, will not actually issue any securities and cannot determine what its capital structure will be at the time that it might actually issue the Preference Stock or Common Stock under the Plan, as Duke does not know when, if ever, it will issue the Preference Stock or Common Stock for which it requests authority for issuance in this Application. Duke submitted with this application a balance sheet as of September 30, 1998 and an income statement for the nine months ended September 30, 1998 (and a copy of the proposed Shareholder Rights Plan). Duke also filed with this Commission copies of all documents that Duke filed with the Securities and Exchange Commission, the New York Stock Exchange, and mailed to its shareholders regarding the proposed Plan.

This matter was presented to the Commission at its weekly Agenda Meeting on January 26, 1999. No party to this proceeding expressed opposition to the request made by the Applicant in its application.

WHEREUPON, after appropriate investigation, the Commission reaches the following

CONCLUSIONS

Based upon a review and study of the verified application and the information contained in the Commission's entire files and record in this matter, the Commission

finds and concludes after appropriate investigation that the requested authorization as described herein is:

- (i) for a lawful object within the Applicant's corporate purposes;
- (ii) compatible with the public interest;
- (iii) necessary or appropriate for or consistent with the proper performance by Applicant of its service to the public and will not impair its ability to perform its services; and is reasonably necessary and appropriate and proper for such purposes.

IT IS, THEREFORE, ORDERED as follows:

1. That Duke is authorized to (i) reserve for issuance, and issue, under the Shareholder Rights Plan, up to 50,000 shares of Preference Stock, \$100 par value, (ii) issue the Rights under the Plan, and (iii) issue shares of Common Stock or other securities in accordance with the Plan, all as described in Duke's application in this docket.
2. That Duke is granted a waiver of §58-27-1710, et seq., insofar as Duke requested a waiver of its obligation to provide information not yet available. Upon issuance of any of the Common Stock authorized by this Order, Duke shall comply fully with §58-27-1710, et seq.
3. Duke shall ensure that its ratepayers shall not bear any of the costs associated with the implementation of the proposed Plan, including any costs that may be associated with the issuance of the Rights, Preference Stock and Common Stock and any

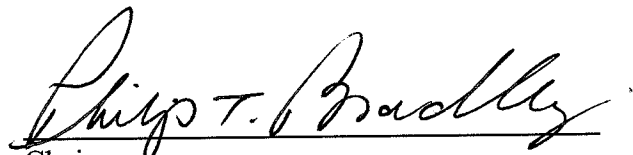
recapitalization that may be required if the provision of the Plan which allows the Rights to be exercised is ever triggered.

4. Approval of this Application does not bind the Commission as to the ratemaking treatment of the transactions contemplated hereunder.

5. This Order shall not, in any way, affect or limit the right, duty or jurisdiction of the Commission to further investigate and order revisions, modifications, or changes with respect to any provision of this Order in accordance with the law.

6. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)